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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,859	03/06/2002	Richard M. Adler	ADLER 01.01	6936

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EXAMINER

ERB, NATHAN

ART UNIT PAPER NUMBER

3628

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/091,859

Applicant(s)

ADLER, RICHARD M.

Examiner

Nathan Erb

Art Unit

3628

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 64-121.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Continuation Sheet:

In response to applicant's amendment, the objection to claim 118 has been withdrawn.

In response to applicant's amendments of the claims, all of the rejections of the claims under 35 USC 112, second paragraph, have been withdrawn, except for the 35 USC 112, second paragraph, rejection for claim 118, which was not remedied.

Regarding applicant's arguments with respect to the rejection of claim 64, applicant first argues that Eder does not disclose selecting a predefined model of a decision domain from among a plurality of predefined models of decision domains. Rather, applicant argues that Eder only features a single decision domain from which to choose, as opposed to a choice of several decision domains disclosed in applicant's application. However, the language of claim 64 does not specify that the plurality of decision domains from which the used decision domain is chosen are actually defined within the computer program of the method. Therefore, the decision domain chosen could merely be a single decision domain offered by the program, which was chosen from a plurality of possible alternative decision domains known but not included as choices within the program. Therefore, Eder does disclose selecting a predefined model of a decision domain from among a plurality of predefined models of decision domains. Thus, applicant's argument with respect to this point is not persuasive.

Additionally, applicant argues that Eder only discloses addressing a single scenario, as opposed to multiple scenarios addressed in the applicant's application. However, Eder does indeed address the analysis of multiple scenarios. For example, the model of business evaluation presented by Eder in Table 1 considers the value of excess cash and marketable securities as one component of the value of the enterprise. In a future projection, a decision might be made to sell off some marketable securities for cash. In different scenarios, different economic projections might result in a different input value for cash realized from the future selling of marketable securities. While Eder does not necessarily disclose analyzing several scenarios simultaneously, it does specify a program which can be run multiple times, with a different scenario defined each time. It should also be noted that the language of claim 64 repeatedly refers to "one OR more alternative scenarios" (emphasis added). So, even a program which only addresses a single scenario is embraced by the language of the claim. Therefore, Eder does disclose addressing multiple scenarios. Thus, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 65, applicant argues that Eder does not disclose one or more dynamic behaviors of people, places, things, events, and decision strategies representing sources of change in the decision domain, the dynamic behaviors representing one or more ways entities (i) change over time and (ii) interact with each other, the one or more dynamic behaviors being ascribed to one or more entity types that depict people, places, things, and decision strategies. This is not the case. In the language of claim 65, some of the types of "enterprise elements" of Table 1 can be "entity types," as their values can define a particular decision strategy. For example, one of the decisions to be tested in the invention of Eder might be the effect on a business's value of reducing the amount of inventory by fifty percent. That particular decision would be a decision strategy. The dynamic behavior of that decision strategy would be the effect of that decision on various "enterprise elements" (entities) in the valuation model of Eder. The changes in the values of the "enterprise elements" would reflect both changes over time (the invention can be used to forecast the future) and interactions with each other (note how some "enterprise elements" in Table 1 are valued based on other values in the table). The dynamic behaviors are "ascribed" to the entity types (types of "enterprise elements") because the dynamic behaviors address how the values of the "enterprise elements" will change based on the inputs to the enterprise valuation model. Note that since, in the language of claim 65, an entity type need only define at least a single one of people, places, things, events, and decision strategies, and only at least one entity type need be present, it is not necessary that entity types depict each one of people, places, things, and decision strategies. If the "enterprise elements" of Eder only depict a decision strategy, they are still sufficient to allow Eder to anticipate claim 65. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 106, applicant first argues that Eder fails to disclose the creation of a plurality of scenarios in a decision domain. As discussed above, while Eder does not necessarily disclose analyzing several scenarios simultaneously, it does specify a program which can be run multiple times, with a different scenario defined each time. Therefore, applicant's argument with respect to this point is not persuasive.

In addition, applicant argues that Eder fails to disclose compiling an application database and specifications to generate an executable decision-support application. However, this is disclosed by Eder in that this step would have to be performed to arrive at the program in Eder which is capable of the functions of that program disclosed by Eder. More specifically, applicant argues that Eder does not disclose applicant's invention with respect to claim 106 because applicant's invention is customizable, whereas creating Eder's application would be limiting the application to the program specified in Eder. While Eder does not disclose creating other applications different from its own program, the language of the claim does not preclude the creation of an application like that of Eder. Therefore, while perhaps other applications could be created under the method of claim 106, the language of claim 106 still embraces the disclosure of Eder, and Eder anticipates claim 106. Thus, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 74, applicant argues that Eder fails to disclose user-specified attribute parameters. Examiner disagrees. In the enterprise valuation method of Table 1, there are input values such as "excess cash & marketable securities" which are clearly user-specific and would need to be specified by the user. Note the asterisk at the end of Table 1, which indicates that "The user also has the option of specifying the total value." Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 100, applicant argues that Eder fails to disclose graphic time series and histogram charts of scenario attributes. Applicant argues that this limitation is required because the claim is written in the conjunctive: wherein the analyses include one or more (i) graphic time series and histogram charts of scenario attributes and (ii) tabular reports summarizing changes in entity attribute parameter values over one or more future time instants. However, this cannot be the correct interpretation because the claim clearly states that the analyses include ONE OR MORE (emphasis added) of (i) and (ii). If (i) and (ii)

were both required, at least two of them would be required and the wording would be "two or more" in place of "one or more." Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 102, applicant argues that Eder fails to disclose wherein at least one intervention is a strategy, plan, investment, or other proposed course of action for influencing a scenario in a desired manner. Examiner asserts that Eder discloses wherein at least one intervention is a strategy for influencing a scenario in a desired manner. Referring to column 46, line 46, through column 47, line 8, for example, the reference discusses the user using the invention of Eder to simulate the effect of particular changes in value drivers. This can be a strategy that is being tested. This can be a user-initiated strategy as opposed to only an inadvertent environmentally-influenced change being simulated, for example, because Eder also addresses the case where the invention is run in goal-seeking mode where the user specifies a particular goal for future financial performance and the system returns a recommendation regarding changes to be made to obtain that goal. If the changes being discussed were merely non-user-initiated environmentally-influenced changes, then recommendations would not be made with respect to changes, as making a recommendation to a user regarding changes to be made implies that at least some of the changes being analyzed can be deliberately initiated by people, that is, they are strategies. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 110, applicant argues that Eder does not disclose a software development environment for a user to create the decision model, wherein the decision model is application-specific. Examiner disagrees. Eder discloses a decision model that is application-specific, that is, it is a decision model specifically designed for the application. Since such a piece of software is disclosed in Eder, a software development environment must have existed to create that software, so that is disclosed by Eder as well. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 116, applicant argues that Eder fails to disclose wherein the outcomes include one or more performance metrics to permit selection of an optimal strategy. Referring to column 46, line 46, through column 47, line 8, for example, the reference discusses the user using the invention of Eder to simulate the effect of particular changes in value drivers. This can be a strategy that is being tested. This can be a user-initiated strategy as opposed to only an inadvertent environmentally-influenced change being simulated, for example, because Eder also addresses the case where the invention is run in goal-seeking mode where the user specifies a particular goal for future financial performance and the system returns a recommendation regarding changes to be made to obtain that goal. If the changes being discussed were merely non-user-initiated environmentally-influenced changes, then recommendations would not be made with respect to changes, as making a recommendation to a user regarding changes to be made implies that at least some of the changes being analyzed can be deliberately initiated by people, that is, they are strategies. As the use of a goal-seeking mode is disclosed for determining particular changes in value drivers to be made to bring about a goal outcome of financial performance, it is also clear that an object of simulating effects of changes in value drivers in the invention of Eder is to determine optimal strategies. The invention of Eder is based on a model of enterprise valuation (see column 5, line 31, through column 6, line 24), so enterprise value would clearly qualify as a performance metric in this case. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 119, applicant argues that Eder does not address the concept of competitive strategy. However, applicant also admits that a key challenge facing managers in developing competitive strategy is understanding advantages in a changing competitive environment. Eder allows a manager to test various strategies to find strategies which maximize the value of the enterprise. Since a more highly valued enterprise reflects a greater advantage over competitors, Eder does indeed address making decisions with respect to competitive strategy. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 70, applicant argues that Eder fails to disclose all of the required limitations of the claim because the claim is recited in the conjunctive, not the disjunctive. Examiner disagrees. The language of the claim recites wherein the attribute parameters are permitted to assume values of any one or more of the following data types: integer or real numbers, symbols, lists, tables, vectors, relationships, interval ranges, free text, and Boolean descriptors. Note that, according to the claim, attribute parameters can assume only one of the data types, as opposed to always being permitted to assume all of the data types. Therefore, the language of the claim embraces the situation where the attribute parameters only assume the values of real numbers, for example. Thus, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejections of claims 71-72 and 111, applicant argues that Kramer et al. is non-analogous art. Examiner disagrees, as both Kramer et al. and applicant's invention are in the field of business methods. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 111, applicant argues that Eder does not disclose using an automated code generator or editing code to generate relational schema and metadata for a decision model. Examiner argues that the rejection is correct. The portions of Eder cited in the rejection make it clear that Eder's invention is capable of automatic retrieval of information from database, as well as the storage of that information in its own database. Databases are typically encoded computer files which have relational schema. The creation and editing of the output database files of Eder would thus use an automated code generator or would edit code to generate relational schema. As addressed in the original rejection of claim 111, Eder does not address the metadata component of this claim, but that gap is filled by Kramer et al. at the cites disclosed in the original rejection for claim 111. Applicant argues against Kramer et al. with a conclusory statement that Kramer et al. does not teach the claim limitations but does not address specifically why the cites for Kramer et al. in the original rejection for claim 111 do not teach the claim limitations for which it is applied. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 82, applicant argues that Huang et al. is non-analogous art. Examiner disagrees, as both Huang et al. and applicant's invention are in the field of business methods. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 117, a "traverse" is a denial of an opposing party's allegations of fact. (Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial.") The Examiner respectfully submits that applicant's arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicant's arguments and comments as constituting a traverse, applicant's arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art.

Even if applicant's challenge of official notice was proper with respect to the rejection of claim 117, Examiner responds as follows: applicant challenges Examiner's assertion that it was well-known in the art at the time of applicant's invention that an optimal strategy is a strategy that displays superior values of performance metrics across the plurality of alternative scenarios. In response, Examiner presents Ouimet et al., U.S. Patent No. 6,308,162 B1. Ouimet et al. discloses optimization of strategy across multiple scenarios, wherein an optimal strategy is a strategy that displays superior values of performance metrics (column 1, line 12, through column 2, line 42; column 4, lines 42-55; gross profits to be maximized is an example of a performance metric in the reference). Therefore, Examiner's assertion that the limitation was well-known in the art at the time of applicant's invention was appropriate. Thus, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 86, applicant argues that Kim et al. is non-analogous art. Examiner disagrees, as both Kim et al. and applicant's invention are in the field of business methods. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejections of claims 88 and 93, applicant argues that Steinman is non-analogous art. Examiner disagrees, as both Steinman and applicant's invention are in the field of simulations. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 92, applicant argues that Eicher, Jr. et al. is non-analogous art. Examiner disagrees, as both Eicher, Jr. et al. and applicant's invention are in the field of business methods. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 94, applicant argues that Ball et al. is non-analogous art. Examiner disagrees, as both Ball et al. and applicant's invention are in the field of computer modeling. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 97, applicant argues that Watanabe et al. is non-analogous art. Examiner disagrees, as both Watanabe et al. and applicant's invention are in the field of simulations. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 118, applicant argues that Abu El Ata fails to disclose updating the alternative scenarios based on the simulated outcome of the selected optimal strategy and simulating results of each of an updated plurality of strategies based on the updated alternative scenarios. Examiner disagrees. The original rejection for claim 118 cited column 3, lines 25-44, of Abu El Ata. That section discusses a method for designing an information system. Various design steps occur, resulting in alternative information system designs. The alternative information system designs are repeatedly compared to various scenarios in an iterative process which repeatedly refines the designs until an optimal design is arrived at. This method discloses updating the alternative scenarios based on the simulated outcome of the selected optimal strategy because when a scenario interacts with an updated information system design, an updated scenario has resulted for that iteration. This method discloses simulating results of each of an updated plurality of strategies based on the updated scenarios because the results are determined for each updated information system design-scenario interaction for each iteration, through simulation. Applicant argues that Abu El Ata does not disclose the invention of claim 118 because the invention of claim 118 permits an entire decision or strategy to be revisited periodically using updated information generated by the simulated outcome of a prior optimal decision or strategy. However, Abu El Ata does disclose this because it discloses an iterative process which updates an information system design [the strategy, in that case] for each iteration based on the results of the previous iteration [which would include the results of the simulation for the information system design which performed best in the previous iteration]. Therefore, applicant's argument with respect to this point is not persuasive.

Regarding applicant's arguments with respect to the rejection of claim 118, applicant argues that Abu El Ata is non-analogous art. Examiner disagrees, as both Abu El Ata and applicant's invention are in the field of computer modeling. Therefore, applicant's argument with respect to this point is not persuasive.

All applicant arguments not specifically responded to above were based on other arguments in the amendment which were specifically responded to above.